

REMARKS

Before entry of this Amendment, claims 1-27 were pending in the application. Claims 6-9, 11, 14, 17-19, 21-24, 26 and 27 have been withdrawn from consideration. After entry of this Amendment claims 1-5, 10, 12, 13, 15, 16, 20 and 25 remain pending under examination. The number of total claims has not been increased, and the number of independent claims has not been increased beyond the number for which payment previously had been made.

Applicant has carefully considered the Examiner's Final Action of July 19, 2010, and the references cited therein. The following is a brief summary of the Action. Claims 1-3, 5, 10, 12, 13, 20 and 25 were rejected under 35 U.S.C. 103(a) as being unpatentable over Baumann et al (USP 6,354,296) in view of Jackson (USP 3,490,447). Claims 4, 15 and 16 were rejected under 35 U.S.C. 103(a) as being unpatentable over Baumann et al in view of Jackson, and further in view of Niemeyer (USP 4,951,664).

For the reasons explained below, applicants respectfully traverse the rejection of claims 1-3, 5, 10, 12, 13, 20 and 25 under 35 U.S.C. 103(a) as being unpatentable over Baumann et al in view of Jackson.

According to each of claims 1 and 12, the baffle layer, which is included in the body portion, is configured to cover the user's mouth and at least part of the user's nose.

Baumann et al fails to disclose a baffle layer that is configured to cover the user's mouth and at least part of the user's nose.

Lines 6-12 on page 3 of the April 2010 Final Office Action contend (emphasis in original):

Jackson discloses an apparatus that does disclose the body portion having a baffle layer configured to cover the user's mouth and at least part of the user's nose (**see fig. 1**). Therefore, it would have been obvious to one having ordinary skill of the art at the time the invention was made to modify Baumann's invention by providing a body portion having a baffle layer configured to cover the user's mouth and at least part of the user's nose as taught by Jackson so that the mask fits over the nose, mouth and chin of the wearer to form a snug fit with the face of the user as well as remove any bacteria from the breathing passage.

Applicant respectfully submits that the second sentence quoted above is factually erroneous.

Applicant respectfully submits that the reason that the Baumann et al mask fails to include a baffle layer configured to cover user's mouth and at least part of the user's nose is because the Baumann et al mask is intentionally constructed differently than a mask such as disclosed in the Jackson reference. Indeed, covering the Baumann et al mask portion 16 with a Jackson baffle layer as proposed in the Final Office Action would defeat the intended purpose of the Baumann et al construction and therefore would not be an action taken by a person having ordinary skill in the art. For it is well settled that a combination or modification of references that directly contradicts the intended purpose of the primary reference (in this case Baumann et al) is improper. M.P.E.P. § 2143.01V states:

If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification.

The Baumann et al face mask 10 includes a mask portion 16 that covers the user's mouth and nostrils. As explained at Baumann et al column 3, lines 57-63 (emphasis added):

Mask portion 16 includes one or more layers of material. Useful layer materials provide a variety of properties to the mask including, e.g., filtering capabilities, liquid resistance, liquid impermeability and liquid imperviousness, and combinations thereof. **Suitable materials for use in the mask portion** include standard face mask materials, e.g., **woven and nonwoven fabrics** (e.g., microfibrous webs).

Thus, the mask portion 16 of the Baumann et al mask 10 that covers the user's nostrils and mouth is intended to be permeable to air being breathed into and through the mask as well as expelled out of and through the mask.

In contrast to the Baumann et al mask 10, the Jackson mask is formed of material that is impervious to air as well as liquids. Indeed, the materials forming the Jackson mask are **impervious to all fluids** because the Jackson mask is constructed so that the air cannot reach the user without moving through the tortuous paths defined

by the protuberances 5 and impinging on the protuberances 5 where the water vapor condenses during exhaling and evaporates during inhaling.

As explained at Jackson column 2, line 68 through column 3, line 7 (emphasis added):

A first form of the improved mask, shown in FIGURES 1-3, is made of a laminated material comprising an internal layer 4 formed with a series of rows of inwardly-extending **bubbles or protuberances 5**, and a flat outer layer 6. The protuberances 5 preferably are of substantial uniform height so that their ends will rest against the wearer's skin and thus define the tortuous passages. The layers may be made of aluminum foil, plastic, or other flexible material, **at least one of the layers being substantially impervious to fluids**. The material should preferably have a substantial thermal conductivity.

Moreover, Jackson (column 3, lines 30-39) explains how the Jackson mask is constructed so that the air is forced to reach the user from the surrounding atmosphere **through the side edges of the mask and around about the tortuous path produced by the bubbles 5** that have their ends resting against the wearer's skin (emphasis added):

The nodular bubbles 5 are arranged in irregularly aligned rows to form **tortuous but continuous passageways from the wearer's nose and mouth** over the inner surfaces of the mask so that the air stream will flow along a random path and **into communication with the atmosphere about the edge 2**. The substantial uniform height of the bubble 5 insures that the ends of the bubbles will contact the wearer's skin so that **the air stream will flow around the bubbles and along the desired random path**.

Allowing the air to penetrate directly through the Jackson mask (as occurs in the Baumann et al mask) would not allow sufficient contact with the Jackson bubbles or protuberances 5 to enable sufficient condensation and evaporation to occur. Thus, the person of ordinary skill in the art would not attempt to modify the Baumann et al structure in a manner that defeated the purpose of the Baumann et al construction as would result from the proposed provision of a Jackson baffle layer (impervious to the

flow of air through said baffle layer) over the body of the Baumann et al mask as being proposed in the Final Office Action.

As to claim 3 in particular, Baumann et al Figs. 4a and 4b notwithstanding, Baumann et al fails to disclose an embodiment in which a first layer contacts the projections of the Baumann et al baffle layer 12 and a third layer contacts the inner surface of the Baumann et al baffle layer 12. Because the Jackson protuberances 5 always contact the wearer's face, Jackson fails to correct these deficiencies in Baumann et al. Accordingly, applicant therefore respectfully submits that claim 3 is patentable under 35 U.S.C. 102(b) over Baumann et al in view of Jackson for this additional reason.

Applicant therefore respectfully submits that claims 1-3, 5, 10, 12, 13, 20 and 25 are patentable under 35 U.S.C. 103(a) over Baumann et al and Jackson.

For the reasons explained below, applicants respectfully traverse the rejection of claims 4, 15 and 16 under 35 U.S.C. 103(a) as being unpatentable over Baumann et al, Jackson and Niemeyer.

Niemeyer fails to correct the deficiencies noted above in the combination of Baumann et al and Jackson.

Applicant therefore respectfully submits that claims 4, 15 and 16 are patentable under 35 U.S.C. 103(a) over Baumann et al, Jackson, and Niemeyer.

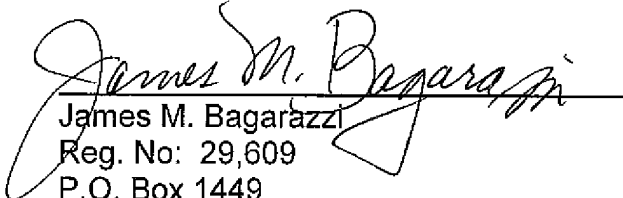
Applicant respectfully requests reconsideration and reexamination of claims 1-5, 10, 12, 13, 15, 16, 20 and 25, as presented herein, and submits that these claims are in condition for allowance and should be passed to issue.

If any fee or extension of time is required to obtain entry of this Amendment, the undersigned hereby petitions the Commissioner to grant any necessary time extension and authorizes charging Deposit Account No. 04-1403 for any such fee not submitted herewith.

Respectfully submitted,

DORITY & MANNING, P.A.

Date: August 31, 2010


James M. Bagarazzi
Reg. No: 29,609
P.O. Box 1449
Greenville, SC 29602
Telephone: 864-271-1592
Facsimile: 864-233-7342